IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Reserved on: 16.01.2023
Pronounced on: 27.01.2023

1. CWP-6696-2019 (O & M)

PAL SINGH AND OTHERS .....Petitioners

Versus

STATE OF PUNJAB AND OTHERS .....Respondents

2. CWP-6259-2019 (O & M)

MANJINDER SINGH AND OTHERS .....Petitioners

Versus

STATE OF PUNJAB AND OTHERS .....Respondents

3. CWP-3936-2019 (O&M)

BALJIT SINGH AND OTHERS .....Petitioners

Versus

THE STATE OF PUNJAB AND OTHERS .....Respondents

4. CWP-15682-2018 (O&M)

LAKHMIR SINGH AND ORS. .....Petitioners

Versus

STATE OF PUNJAB AND OTHERS .....Respondents

5. CWP-18327-2018 (O & M)

DAVINDER SINGH AND ORS. .....Petitioners

Versus

STATE OF PUNJAB AND OTHERS .....Respondents

6. CWP-22261-2018 (O & M)

PRITPAL SINGH AND OTHERS .....Petitioners

Versus

THE STATE OF PUNJAB AND OTHERS .....Respondents

7. CWP-20175-2020 (O & M)

JASBIR SINGH AND OTHERS .....Petitioners

Versus

THE STATE OF PUNJAB AND OTHERS .....Respondents

8. CWP-29012-2019 (O & M)

HARJIT SINGH AND ANOTHER ....Petitioners

Versus

STATE OF PUNJAB AND OTHERS .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Manpreet Singh Longia, Advocate
for petitioner No.1 in CWP No.6259-2019.

Mr. Naresh Kaushal, Advocate with
Mr. Raj Kumar Rathore, Advocate
for the petitioners in CWPs-6696 and 6259-2019 and
15682, 18327 and 22261 of 2018 and 20175 of 2020.

Sh. A.S. Narang, Advocate with
Sh. Arun Sharma, Advocate
for the petitioners in CWP No.3936-2019.

Mr. Amit Sharma, Advocate
for the petitioners in CWP-29012-2019.

Mr. Karanjit Singh, Addl. A.G., Punjab.

Mr. Rupinder Khosla, Sr. Advocate assisted by
Mr. Aman Sharma, Advocate
for respondent No. 7 – GMADA.

Mr. Shailendra Jain, Sr. Advocate assisted by
Ms. Ashmita Sandhu, Advocate,
for the respondent No.13 in CWP No.22261-2018,

for the respondent No.11 in CWP No.6696-2019,
for the respondent No.9 in CWP No.6259-2019,
for the respondent No.12 in CWP No.3936-2019.

Ms. Divya Sharma, Advocate
for respondent No.6 in CWP No.20175-2020.

Mr. Bikramjit Singh, Advocate
for respondent No.8 in CWP No.20175-2020.

Mr. D.S. Patwalia, Sr. Advocate assisted by
Mr. Navjeet Singh Sandhu, Advocate
for respondent No.11 in CWP No.3936-2019.

Mr. Chetan Mittal, Sr. Advocate assisted by
Mr. Udit Garg, Advocate and
Mr. Tushar Sharma, Advocate
for respondent No.11 in CWP No.22261-2018.

Mr. Amandeep S. Talwar, Advocate
for respondent No. 12 in CWPs-15682 and 18327-2018.

Mr. Munish Jolly, Advocate
for the Gram Panchayats in all writ petitions.

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SURESHWAR THAKUR, J.

1. Since all the writ petitions embody almost similar facts, as also similar causes of action. Moreover, when all the relief's ventilated in all the writ petitions (supra), are directed against the grant of CLUs to the developer/builder concerned, in respect of revenue *rastas* or passages, whereons the petitioner(s) claim the exercisings of their easementary rights. Therefore, all the writ petitions are amenable for becoming decided through a common verdict.

Facts of CWP-6696-2019.

2. The petitioners claim to be the Khewatdars/proprietors of village Kansala, HB No. 157, Tehsil Majri, District SAS Nagar Mohali. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the

only source to reach towards their respective fields. In the relevant revenue records, in the column of ownership thereof, the proprietors/Khewatdars of the village are recorded as *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat*, whereas, in the cultivation column, their possession as cultivators has been recorded. The developer/builder purchased some land from the respective owners in the aforesaid village, whereas, about 750 acres of land of the aforesaid village, is yet under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

3. The Chief Town Planner Punjab on the application of the private developer/builder vide memo No. 4063 dated 19.07.2013, issued license/permission, for change of land use, qua the residential Mega project in the aforesaid village but with a condition therein, that the revenue rastas/khals and pucca roads, if any, passing through the site, shall be kept un-obstructed. However, the official respondents in connivance with private developers concerned, while putting pressure on the Gram Panchayat, has passed the impugned decision dated 23.04.2018, as embodied in Annexure P-9, hence granting permission for transferring the land through a sale deed being executed qua the builder/developer, but without giving any notice to the lawful owners/petitioners/Khewatdars of the village (Supra).

4. The grievance of the petitioners, is that, the impugned decision dated 23.04.2018, as carried in Annexure P-9, is passed in contravention to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013, and, the same deserves to be quashed and set aside.

Facts of CWP-6259-2019.

5. The petitioners are agriculturists, and, own about 20 acres of land in village Bharonjian, Sub Tehsil Majri, District SAS Nagar Mohali. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the only source to reach towards their respective fields. The private developer/builder purchased some land from the respective owners in the aforesaid village, whereas, about 20 acres of land of the aforesaid village is still under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

6. The Chief Town Planner Punjab on the application of the private developer/builder vide memo No. 4063 dated 19.07.2013, issued license/permission for change of land use, qua residential Mega project in the aforesaid village but with a condition therein that the revenue rastas/khals and pucca roads, if any, passing through the site, shall be kept un-obstructed.

7. The official respondents in connivance with private developers concerned, while putting pressure on the Gram Panchayat, hatched a plan to sell the said revenue *rastas,* and, had got a resolution, as carried in Annexure P-3, hence passed by the Gram Sabha concerned, containing therein a proposal for the said revenue *rasta* becoming acquired by the private developer concerned.

8. Through the instant writ petition, the petitioners herein cast a challenge to the aforesaid passed panchayat resolution of 08.02.2018,

resolution whereof is embodied in Annexure P-3, and, also to the subsequent thereto proceedings, as, they are averred to cause violation to the principles of natural justice, and, also are contended to breach the mandate of Articles 14 and 16 of the Constitution of India.

Facts of CWP-3936-2019

9. The petitioners claim to be the Khewatdars/proprietors of village Rasulpur, HB No. 163, Tehsil Majri, District SAS Nagar Mohali. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the only source to reach towards their respective fields. In the relevant revenue records, the proprietors/Khewatdars of the village are recorded as *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat,* whereas, in the cultivation column, their possession as cultivators has been recorded. The developer/builder purchased some land from the respective owners in the aforesaid village, whereas about 30 acres of land of the aforesaid village is under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

10. The Chief Town Planner Punjab on the application of the private developer/builder vide memo No. 8198 dated 17.11.2011, issued license/permission, for change of land use, qua residential Mega project in the aforesaid village but with a condition therein that the revenue rastas/khals and pucca roads, if any, passing through the site, shall be kept un-obstructed. However, the official respondents in connivance with private developers concerned, while putting pressure

on the Gram Panchayat, has passed the impugned decision dated 20.06.2018, as embodied in Annexure P-10, hence granting permission for transfer of the land (supra) through a sale deed being executed qua the builder/developer, but without giving any notice to the lawful owners/petitioners/Khewatdars of the village (Supra).

11. The grievance of the petitioners, is that, the impugned decision dated 20.06.2018, as carried in Annexure P-10, is passed in contravention to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and, the same be quashed and set aside.

Facts of CWP-15682-2018

12. The petitioners claim to be the khewatdars/proprietors of village Dhanauran, HB No. 18, Tehsil Majri, District SAS Nagar Mohali. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the only source to reach towards their respective fields. In the relevant revenue records, the proprietors/Khewatdars of the village are recorded as *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat,* whereas, in the cultivation column, their possession as cultivators has been recorded. The developer/builder purchased some land from the respective owners in the aforesaid village, whereas, about 100 acres of land of the aforesaid village, is still under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

13. The Chief Town Planner Punjab on the application of the

private developer/builder vide memo No. 1932 dated 31.03.2014 issued license/permission, for change of land use qua residential Mega project in the aforesaid village, but with a condition therein that the revenue rastas/khals and pucca roads, if any, passing through the site, shall be kept un-obstructed. However, the official respondents in connivance with private developers concerned, while putting pressure on the Gram Panchayat, has passed the impugned decision dated 11.05.2018, as embodied in Annexure P-10, hence for the purpose of convening a meeting under the Chairmanship of the Deputy Commissioner, and, for ensuring that the successful transfer occurs of the disputed land hence through a sale deed, being executed qua the builder/developer, but without giving any notice to the lawful owners/petitioners/Khewatdars of the village (Supra).

14. The grievance of the petitioners, is that, the impugned decision dated 11.05.2018, as carried in Annexure P-10, is passed in contravention to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and, the same be quashed and set aside.

<u>Facts of CWP-18327-2018</u>

15. The petitioners claim to be the khewatdars/proprietors of village Mastgarh, Tehsil Majri, District SAS Nagar Mohali. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the only source to reach towards their respective fields. In the current jamabandi for the year 1914-15, in the ownership column, Gram Panchayat deh has been recorded, whereas, in the cultivation column, *Makbuja Basindgarn* is

reflected.

16. The private developer/builder purchased some land from the respective owners in the aforesaid village, whereas, about 70 acres of land of the aforesaid village, is still, under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

17. The Chief Town Planner Punjab on the application of the private developer/builder vide memo No. 1932 dated 31.03.2014, issued license/permission for change of land use qua residential Mega project in the aforesaid village but with a condition therein that the revenue rastas/khals and pucca roads, if any, passing through the site, shall be kept un-obstructed. However, the official respondents in connivance with private developers concerned, while putting pressure on the Gram Panchayat, has passed the impugned decision dated 11.05.2018, as embodied in Annexure P-16, hence for the purpose of convening a meeting under the Chairmanship of the Deputy Commissioner, and, for ensuring that the successful transfers occur of the disputed land hence through a sale deed being executed qua the builder/developer, but without giving any notice to the lawful owners/petitioners/Khewatdars of the village (Supra).

18. The grievance of the petitioners, is that, the impugned decision dated 11.05.2018, as carried in Annexure P-16, is passed in contravention to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and they pray that the said order be quashed and set aside.

<u>Facts of CWP-22261-2018</u>

19. The petitioners claim to be the khewatdars/proprietors of village Salamtpur, Tehsil Majri, District SAS Nagar Mohali. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the only source to reach towards their respective fields. In the respective revenue records, the petitioners/khewatdars are recorded as, *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat* in the column of ownership, whereas, in the cultivation column, their possession as cultivators has been recorded. The private developer/builder purchased some land from the respective owners in the aforesaid village, whereas about 60 acres of land of the aforesaid village is still under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

20. The Chief Town Planner Punjab on the application of the private developer/builder vide memo No. 8198 dated 17.11.2011, issued license/permission for change of land use qua residential Mega project in the aforesaid village but with a condition therein that the revenue rastas/khals and pucca roads, if any, passing through the site, shall be kept un-obstructed. However, the official respondents in connivance with private developers concerned, while putting pressure on the Gram Panchayat, has passed the impugned decision dated 23.04.2018, as embodied in Annexure P-15, hence granting permission for transfer of the land (supra) through a sale deed being executed qua the builder/developer, but without giving any notice to the lawful owners/petitioners/Khewatdars of the village (Supra).

21. The grievance of the petitioners, is that, the impugned decision dated 23.04.2018, as carried in Annexure P-15, is passed in contravention to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and, the same be quashed and set aside.

Facts of CWP-20175-2020

22. The petitioners claim to be the khewatdars/proprietors of village. Thereins are averred to exist, revenue *rastas,* as became carved from the khewats of the Khewatdars/petitioners, in the finalized consolidation scheme. The said revenue *rastas* are averred to be the only source to reach towards their respective fields. In the relevant revenue records, the khewatdars/proprietors were recorded as *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat,* in the column of ownership, whereas, in the cultivation column, their possession as cultivators has been recorded. The private developer/builder purchased some land from the respective owners in the aforesaid village, whereas about 40 acres of land of the aforesaid village is still under the cultivation of the proprietors/Khewatdars of the village, and, whereins the said revenue *rastas* are averred to exist, for enabling the cultivators to access their fields.

23. The official respondents No. 1 to 6 in connivance with private developers concerned, while putting pressure on the Gram Panchayat, has passed the impugned letter/decision dated 07.08.2020, and, whereafter, resolutions dated 31.08.2020, and, dated 14.09.2020 were also passed by the Gram Panchayat concerned, impugned decision(s) and resolution(s) whereof, are respectively embodied in Annexure P-6, in Annexure P7, and in Annexure P-8, with a proposal

therein for the sale of the revenue *rastas* to the builder/developer, but without giving any notice being served upon the lawful owners/petitioners/Khewatdars of the village (Supra).

24. The grievance of the petitioners, is that, the impugned decision dated 07.08.2020, as carried in Annexure P-6, is passed in contravention to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and, the same be quashed and set aside.

<u>Contentions of the learned counsel for the petitioner(s).</u>

25. The counsels for the petitioner(s) submit, that since in the finalized scheme(s) of consolidation, the petition lands became described as revenue passages, for the exercising thereons of easementary rights, rather by the cultivators concerned, and or, since the above reserved revenue passages, are not meant to be used for any purposes other than for which they become reserved or carved in the finalized consolidation operations. Therefore, the counsels for the petitioner(s) contend, that the grant of CLUs to the builder/developer concerned, arrayed as respondent(s) in the respective writ petitions, rather became impermissibly granted to the developer concerned. They submit, that the said grant of CLUs has eroded the exercisings by them of their easementary rights, on the said carved revenue *rastas*.

26. That the apposite sales of the revenue *rastas* concerned, to the builder/developer concerned, after an approval thereto becoming accorded by the Competent Authority, is also grossly impermissible. They support the above submission, through theirs' making an address before this Court, that the predecessors in interest of the petitioners, were recorded in the finalized consolidation scheme, as *Jumla Malkan*

Deegar Haqdaran Hasab Rasad Rakba Khewat. Thus, they argue that the petitioner(s) hold a lawful title to ably exercise theirs easementary rights on such revenue *rastas*. They also submit that both the issuance(s) of the apposite CLUs, besides the makings of apposite sales of the revenue *rastas, qua* the private builder/developer concerned, after an approval being granted by the Competent Authority to the resolution of the Gram Panchayat concerned, rather are ridden with a vice of fraud, as thereupon the exercisings thereons of their easementary rights, has been completely unlawfully eroded .

27. The learned counsel appearing for the petitioner(s) submits that the sale of the revenue *rastas* to the developer/builder concerned, is made on a minimal and abysmally low sale consideration. They support the above argument through making a mention to the decision made on the apposite land reference petition, hence by the jurisdictionally competent reference Court, whereby, in respect of the land adjacent to the revenue *rastas,* compensation comprised in a sum of Rs. 2.5 crores per acre rather became determined by the learned Reference Court concerned.

28. That since the petitioner(s) on the plank of theirs holding a valid right to ably exercise their easementary rights, on the revenue *rastas,* were persons interested for receiving compensation, on lawful termination(s) of acquisition(s) proceedings, rather becoming drawn qua the revenue *rastas* concerned. Therefore, they submit that the alternative thereto recourse adopted by the authorities below, through theirs respectively making the CLUs concerned, in favour of the developer/builder concerned, and or, theirs permitting the sale of revenue *rastas* concerned, to the said builder/developer, naturally but

has breached their otherwise lawful right or interest, to claim determination(s) of compensation, in respect thereof, rather by the jurisdictionally Competent Authorities. Therefore, they submit that for want of lawful determination(s) of compensation to the petitioners concerned, as does evidently emerge, through the making of the respective CLUs, in favour of the builder/developer concerned, and or, through the makings of apposite sales of the revenue *rastas* to the developer/builder concerned, rather has thereafter further caused breach to the mandate of Article 300 A, and, also to the mandate enshrined in Article 31-A of the Constitution of India.

29. Learned counsel appearing for the petitioner(s) further submit, that the issuance of CLUs concerned, or the making of sale deeds, besides the makings of permission(s), for executing sale deeds in respect of the revenue *rastas,* hence to the builder/developer concerned, though purportedly occurred in the face of Rule 12 A of the Punjab Village Common Land (Regulation) Rules, 1964, but the said rule is contended to be applicable, only in respect of the lands described as *Shamilat deh,* and the said rule does not apply, in the event of an entry of *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat* becoming carried in favour of the petitioner(s) in the revenue records, whereupon the said holders concerned, hence become entitled to make cultivations of the lands concerned, besides they also become entitled to exercise their lawful easementary rights on the revenue *rastas,* as do also become reflected in the revenue records concerned.

30. In short, the learned counsel appearing for the petitioner(s) contend with much force, before this Court, that both the makings of the CLUs concerned, as well as, the grantings of permission to execute

the sale deeds by the Competent Authority, in favour of the builder/developer concerned, and or, the execution of the sale deeds in respect of such revenue passages or *rastas*, is but, completely impermissible, as well as, unlawful, and, that it be undone through the respective quashing(s), being made, of the CLUs concerned, and, also of the sale deeds concerned, as become executed.

Submissions of the learned counsel appearing for the respondents/opposite parties.

31. The learned counsels appearing for the opposite parties/respondents submit with much vigor before this Court, that the instant petitions are completely misconsituted, and, are also a gross abuse of the process of Court/Law. They support the above argument through theirs challenging, the *locus standi* of the petitioner(s), to cast the instant petition before this Court. The above challenge becomes rested upon the plank, that the petitioner(s) are not members of the *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat,* nor consequently they have any lawful right to claim, that on the revenue passages or revenue *rastas* they have any valid right to exercise their easementary rights. Therefore, they pray that the instant petitions, be summarily dismissed rather for want of *bona fides* besides for want of *locus standi* inhering in the petitioner(s), hence to maintain the instant petition(s) before this Court.

32. The counsel for the opposite parties also submit, that both the issuance of CLUs concerned, as well as, the execution of the sale deeds concerned, in respect of the revenue passages or revenue *rastas* concerned are but valid. They support the above submission, by drawing the attention of this Court, to the introduction through a notification dated 20.01.2016, of Section 12 A (2), in the Punjab

Village Common Land (Regulation) Rules, 1964, relevant rule whereof is reproduced hereinafter, whereby a lawful authority becomes vested in the competent authorities, to sell the "abandoned *rastas"* or which are not in use in the *Shamilat deh*. They submit that since the revenue *rastas* concerned, are abandoned, and, are not in use, therefore, since within the domain of the above newly introduced rule, the revenue *rastas* or passages were evidently abandoned *rastas,* and or, were not used by the persons who were earlier lawfully entitled to exercise thereons their respective easementary rights. Thus, the makings of the CLUs concerned, and or, the execution of the sale deeds concerned, in favour of the developer/builder concerned, becomes fully protected by the above said rule.

> *" Rule 12- A. Transfer of land by sale:-*
>
> *(1)* ....
>
> *(2) The abandoned paths (rastas) or water-courses (khals) not under use in shamlat deh falling in all government licensed projects, may also be transferred by sale in accordance with the laid down procedure.*"

<u>Impugned orders</u>

33. Through, the makings of the impugned orders, as respectively carried in Annexure P-9 in CWP-6696-2019, Annexure P-3 in CWP-6259-2019, Annexure P-10 in CWP-3936-2019, Annexure P-10 in CWP-15682-2018, Annexure P-16 in CWP-18327-2018, Annexure P-15 in CWP-22261-2018, Annexures P-6, P-7 and P-8 in CWP-20175-2020, the Competent Authorities, after assignments or approvals, qua the resolutions of the Gram Panchayat concerned, in favour of the builder/developer concerned, rather respectively accorded the apposite permission(s) for the execution of sale deeds, and or, meted sanction(s) for the issuance of CLUs qua the private

builder/developer concerned.

<u>Analysis of the submission (Supra), as addressed before this Court, respectively by the counsel for the petitioner(s) as well as by the counsel for the respondents.</u>

34. The counsels for the petitioner(s), though make a submission, that the petitioner(s) are entitled to maintain, the instant petition(s) before this court, besides also make a further submission before this Court, that the requisite *locus standi* does inhere in the writ petitioner(s). However, the above contention has been disputed by the learned counsel appearing for the opposite parties.

35. The reliance(s), as made respectively by the counsels concerned, to respectively maintain the writ petition before this Court and or, theirs becoming disentitled to maintain the said petitions before this Court, becomes further made dependent, upon the petitioner(s) espousing, qua theirs being, lawful successors in interest of certain land owners, in respect of, whom their occurs an entry of *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat,* and, qua whether such an espousal rather respectively being valid, and or, suffering from a taint. Now, significantly, given the above contention coming under a heavy dispute. Therefore the pivotal disputed issue, as appertaining to the *locus standi* of the petitioner(s) to maintain the instant petition(s), as, made dependent upon the above revenue entry, and, to which they claim a lawful succession from their respective predecessors in interest, but necessarily does not require, that it may become decided in a summary fashion, in these writ petitions.

36. The reason for making the above inference ensues, from the factum, that pleadings in respect of the above are to be ensured to be proven, only on an issue in respect thereof becoming struck, by the

juridictionally competent authorities, and, thereafter evidence becoming adduced on the issues as become struck from the pleadings of the parties. Therefore, merely on an exchange of affidavits inter-se the rival contestants before this Court, carrying thereins the respective contentions of the litigants concerned, rather the writ Court, cannot either draw issues in respect of such heavily contested pleadings nor can ask for evidence becoming adduced thereons nor this Court can ask for the tenderings of the documents in support of the appositely struck issues nor can ask for proof, in accordance with law, being adduced in respect of the documents appertaining to the devolutions qua the petitioners, hence purportedly happening from their respective predecessors in interest, qua the benefit of the revenue entrie(s) of *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat,* nor in the writ proceedings rather it can become decided whether the said entries appertain to the writ lands or to some other lands.

<u>Lawful remedy of the petitioners.</u>

37. The above exercise has to be undertaken only on a petition instituted, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short call 'the Act'), becoming preferred by the petitioners concerned, before the competent statutory authority, irrespective of the fact that the Gram Panchayat concerned, has received an approval from the competent authorities, in respect of the makings of the CLUs concerned qua the developer/builder concerned. The relegation of the petitioners qua the remedy (supra), whereins, the apposite respondents thereins would become enabled to contest the petition, but would efficaciously settle the controversy, as has evolved amongst them, in respect of the above

issue of *locus standi,* besides would also for reasons set henceforth, capacitate all concerned to may be legitimize or de-legitimize, the respectively drawn CLUs, and or, the respectively executed sale deeds, in respect of the revenue *rastas* concerned, as become issued/executed qua the builder/ developer concerned. The reason for making the above conclusion stems from the fact, that though there cannot be any reopening of a lawfully finalized consolidation scheme, but when the revenue *rastas* are purportedly obstructed at the instance of the developer/builder concerned, respectively through theirs becoming granted CLUs, and or, through theirs becoming granted permission to execute the sale deeds in respect thereof, and or, through theirs making the sale deeds qua the revenue *rastas.* Thus, when obviously the said carved revenue *rastas* become obstructed, therefore, the petitioners who claim themselves to become entitled to exercise thereons their easementary rights, thus, on occurrences of obstructions, qua exercisings thereofs by them, resultantly they can well cast a petition under Section 42 of 'the Act' before the Competent Authority.

38. Though the learned counsels appearing for the litigants concerned, also have made respective contentions qua the issuances, of the CLUs concerned, and or, the execution of the sale deeds concerned, qua the developer/builder concerned, rather were respectively unlawfully issued, and or, were lawfully issued, and or, were lawfully made, and or, were unlawfully made. Therefore, it is but imperative, to also make tentative prima facie conclusions in respect of the above said arguments. Primarily only if the petitioner(s) are able to establish before the Competent Authority, but in a petition constituted, before the said Authority created under Section 42 of 'the Act', that they are the

lawful successors in interest from their respective predecessors in interest, who were holding the writ lands as *Jumla Malkan Deegar Haqdaran Hasab Rasad Rakba Khewat*, that thereupon, alone they can also well establish, that the revenue *rastas* or revenue passages, rather did through the drawings of the CLUs concerned, and or, through the drawings of sale deeds concerned, in favour of the builder/developer, hence became unlawfully obstructed, hence for theirs ablest user for the relevant purpose. They can also when can then plead, besides also establish that the said purported apposite obstructions, at the instance of the developer/builder concerned, is done, despite the occurrence of an express provision in the apposite CLU, that there would be no restriction or obstruction caused at the instance of the developer/builder concerned, against users thereof, at the instance of the land holders, who were otherwise lawfully entitled to exercise thereons their respective easementary rights. Thus, the assignments to the petitioners hence the liberty to adduce there, the above proof qua any contested fact, but does fortify this Court, to relegate the petitioners to the (supra) alternative, and, efficacious remedy.

Analysis of the introduction of Rule 12A (2) in the Punjab Village Common Lands (Regulation) Rules, 1964 through notification dated 20.01.2016.

39. The counsels also respectively argue before this Court, that the introduction, through a notification dated 20.01.2016 of Rule 12A (2) in the Punjab Village Common Lands (Regulation) Rules, 1964, whereby there is assignments of jurisdiction, to the Competent Authority, to sell abandoned *rastas,* did respectively invalidate, and or, validate(s) the CLUs, and or, the makings of sale deeds concerned, qua the said revenue passages or revenue *rastas,* given such *rastas*

rather respectively being not abandoned, and or, being abandoned *rastas*. However, even if assuming that the revenue passages or revenue *rastas* concerned, were abandoned *rastas,* and, as such, did well empower the Competent Authority, to lawfully alienate them to the developer/builder concerned, respectively through the drawings of CLUs concerned, or through the drawings of deeds of conveyance in favour of the developer/builder concerned, but yet again the issue with respect to the revenue *rastas* or revenue passages rather being abandoned *rastas* or not being abandoned *rastas,* but cannot be decided in a summary manner by the Writ Court. The above R*es-controversa* can only be determined when the respective contentions (supra), become reared in pleadings, to be cast only before the Competent Authority concerned, resulting in issues becoming drawn, and, also evidence thereons becoming permitted to be adduced by the litigants, whereuponwhom the apposite discharging onus becomes cast. Therefore, the above issue qua the respective impermissibility or permissibility relating to the makings of the CLUs concerned, or to the legality of granting of permissions qua the execution of deeds of conveyance or with respect to the invalidity or validity of execution of sale deeds qua the disputed revenue *rastas* rather qua the builder/developer concerned, to the considered mind of this Court, cannot be determined, by this Court, in a petition cast under Section 42 of 'the Act', irrespective of the makings of the CLUs concerned, and or, irrespective of the makings of resolution(s) which became subsequently accepted by the Competent Authority, and, also became acted upon.

40. Though the learned counsel appearing for the petitioners contented with much vigor before this Court that, rather the makings of

the CLUs concerned, and or, the makings of the sale deeds concerned, in favour of the developer/builder concerned, especially when the said CLUs and the sale deeds include thereins the revenue passages, and, revenue *rastas,* thereupon, the able mode available to become recoursed by the Competent Authority, became comprised in acquisition proceedings qua such *rastas* rather being initiated, followed by reasonable compensation in respect thereof, being determined by the jurisdictionally empowered authority qua the petitioners concerned, than through alienation(s) rather being made of the said *rastas* qua the developer/builder concerned.

41. Though they obviously also contend, that for want of the above valid recourse becoming adopted by the Competent Authority, rather the latter contrarily proceeding to inaptly draw the CLUs concerned, or inaptly authorizing the execution of the deeds of conveyance in favour of the developer/builder concerned, rather has also resulted in breach being caused to the mandate of Article 300 A, and, Article 31 A of the Constitution of India. However, though the above contention may prima facie have some vigor, but again this Court cannot pass any mandamus, upon, the respondents concerned, to draw acquisition proceedings under the relevant statutory provisions, for ensuring qua therethrough rather just and reasonable compensation, becoming assessed in favour of the petitioners, qua the *rastas* concerned, in respect whereof, the respectively made CLUs become issued, or the sale deeds become approved to be executed, and or, become already executed. The reason for forming the above inference, stems from the fact, that until a binding and conclusive verdict, is drawn by the Collector, in a petition drawn under Section 42 of 'the Act'

qua the entitlement of the petitioner(s) to make user of the revenue *rasta* or revenue path, thereupto it may not be sagacious for this Court, to proceed to make a determination, that they were lawfully entitled to exercise their easementary rights on the apposite revenue *rastas* or on the apposite revenue path, which become purportedly obstructed by the developer/builder concerned, nor this Court would become lawfully capacitated to proceed to, make a mandamus upon the respondents concerned, to ensure the makings of determination(s) of compensation in favour of the petitioner(s) concerned, after issuance of the relevant acquisition notification under the relevant statute.

<u>Principles of Law</u>

Before parting, it is deemed imperative to summarize the principles of law, which are done in the hereinafter manner :-

(1) In case there is a heavy dispute in a writ proceedings, in respect of the *locus standi* of the petitioner to maintain the petition, thereupon, such a dispute cannot be settled in writ proceedings but rather can become determined in the alternative thereto efficacious remedy, as thereins on the contested pleadings rather issues would become struck and also evidence would become adduced.

(2) The factum of revenue *rastas* becoming unlawfully obstructed or not, also does require evidence in respect thereof becoming adduced, and, such evidence is not receivable in writ proceedings but rather is adduceable only before the Competent Statutory Authority.

(3) In case there is a dispute in respect of the entitlement of the petitioners, as lawful interest holders hence to claim compensation in respect of the revenue *rastas,* thereupon, also the said

dispute with respect to the above said entitlement cannot be settled in by the Writ Court, as prior thereto, the petitioners are required to establish before the Competent Statutory Authority, that they were entitled to exercise their easementary rights on the disputed revenue *rastas* concerned, and, only subsequent thereto there may be a possibility for a mandamus being made qua lawful determinations of compensation being made qua the petitioners in respect of the unlawfully alienated revenue *rastas*.

Final Order by this Court

42. In consequence, in view of the above, this Court, at this stage, does not find any merit in the Writ petitions, but is constrained to dispose of the same with the following observations/directions upon all concerned:-

a) the petitioners concerned, shall irrespective of such resolutions becoming approved, either for the issuance of CLUs or for execution of the sale deeds in favour of the developer/builder concerned, shall within two weeks from today institute a petition under Section 42 of 'the Act', and array therein, the respondents herein, as respondents thereins, and, on the above petition being preferred within the afore period of time, thereupon, the Competent Authority concerned, shall make a lawful decision thereons but only after hearing all concerned. The above decision shall be made within a period of six months from its preferment.

b) On preferment of the above petition, the determination(s) to be made by the Competent Authority concerned, shall cover not only the issue of *locus standi* of the petitioner(s) to cast the petition, claiming thereins the exercisings of easementary rights by them, on the revenue *rastas,* but also shall cover the fact as whether the said revenue *rastas* are abandoned *rastas,* and or, whether there any unlawful obstruction at the instance of the developer/builder concerned, in respect of theirs ablest user for the relevant purpose, by the petitioners.

43. Since the main case itself has been decided, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

27.01.2023
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No